

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEFFREY L. MORRIS,

)

8:09CV80

)

Petitioner,

)

)

v.

)

**MEMORANDUM  
AND ORDER**

)

ROBERT HOUSTON,

)

)

Respondent.

)

The petitioner has filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#) (filing no. [1](#)), a Motion for Leave to Proceed In Forma Pauperis (IFP) (filing no. [2](#)), and a certified copy of his trust account information (filing no. [7](#)).

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the Motion for Leave to Proceed IFP pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#).<sup>1</sup> The petitioner's trust account statement shows that he had an average monthly balance of \$100 or more in his account for the six-month period immediately preceding the filing of the Petition. (Filing No. [7](#).) For this reason, the court concludes that the petitioner must be required to pay the \$5.00 filing fee because he has the financial ability to do so. See [28 U.S.C. § 1915\(a\)](#).

IT IS THEREFORE ORDERED that:

1. the petitioner's Motion for Leave to Proceed IFP (filing no. [2](#)) is denied.

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<sup>1</sup>The court recognizes that the provisions of [28 U.S.C. § 1915\(b\)](#) do not apply to habeas cases. See [Malave v. Hedrick, 271 F.3d 1139, 1139-40 \(8th Cir. 2001\)](#).

2. the petitioner is granted until April 29, 2009, to pay the \$5.00 filing fee. The petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.
3. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: April 29, 2009: deadline for the petitioner to pay the \$5.00 filing fee.

Dated March 31, 2009.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge